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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**ANN FOX, INDIVIDUALLY  
AND ON BEHALF OF ALL  
OTHERS SIMILARLY  
SITUATED,**

Plaintiff,

v.

**AUS, INC.,**

Defendant.

**Case No.:**

**CLASS ACTION COMPLAINT FOR  
DAMAGES**

**JURY TRIAL DEMANDED**

1. ANN FOX ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of AUS, INC. ("Defendant"), in negligently and/or willfully contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

2. The TCPA was designed to prevent calls and text messages like the

1 ones described herein, and to protect the privacy of citizens like Plaintiff.  
2 “Voluminous consumer complaints about abuses of telephone technology – for  
3 example, computerized calls dispatched to private homes – prompted Congress to  
4 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

5 3. In enacting the TCPA, Congress intended to give consumers a choice  
6 as to how corporate similar entities may contact them, and made specific findings  
7 that “[t]echnologies that might allow consumers to avoid receiving such calls are  
8 not universally available, are costly, are unlikely to be enforced, or place an  
9 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. In  
10 support of this, Congress found that

11 [b]anning such automated or prerecorded telephone  
12 calls to the home, except when the receiving party  
13 consents to receiving the call or when such calls are  
14 necessary in an emergency situation affecting the health  
15 and safety of the consumer, is the only effective means  
16 of protecting telephone consumers from this nuisance  
and privacy invasion.

17 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL  
18 3292838, at\* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on  
19 TCPA’s purpose).  
20

21 4. Congress also specifically found that “the evidence presented to the  
22 Congress indicates that automated or prerecorded calls are a nuisance and an  
23 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,  
24 *Mims*, 132 S. Ct. at 744.

25 5. As Judge Easterbrook of the Seventh Circuit recently explained in a  
26 TCPA case regarding calls to a non-debtor similar to this one:

27 The Telephone Consumer Protection Act ... is well  
28 known for its provisions limiting junk-fax

transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

*Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

### **JURISDICTION AND VENUE**

6. This Court has federal question jurisdiction because this case arises out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

7. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. § 1391(b)(2) and 1441(a) because Defendant is subject to personal jurisdiction in the County of Santa Barbara, State of California as Plaintiff is a resident of Santa Barbara County, State of California and Plaintiff received the calls at issue within this judicial district.

### **PARTIES**

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose principal place of business and state of incorporation is in the State of New Jersey. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Plaintiff alleges that at all times

1 relevant herein Defendant conducted business in the State of California and in the  
2 County of Santa Barbara, and within this judicial district.

3 **FACTUAL ALLEGATIONS**

4 10. At all times relevant, Plaintiff was a citizen of the State of California.  
5 Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47  
6 U.S.C. § 153 (10).

7 11. Defendant is, and at all times mentioned herein was, a corporation  
8 and a “person,” as defined by 47 U.S.C. § 153 (10).

9 12. At all times relevant Defendant conducted business in the State of  
10 California and in the County of Santa Barbara, within this judicial district.

11 13. On or about October 5, 2013, Defendant placed its calls to Plaintiff’s  
12 cellular telephone from the following telephone number: (702)-359-5518.

13 14. The calls Defendant placed to Plaintiff’s cellular telephone were  
14 placed via an “automatic telephone dialing system,” (“ATDS”) as defined by 47  
15 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

16 15. This ATDS has the capacity to store or produce telephone numbers  
17 to be dialed, using a random or sequential number generator.

18 16. The telephone number that Defendant, or its agents, called was  
19 assigned to a cellular telephone service for which Plaintiff incurs a charge for  
20 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

21 17. These telephone calls constituted calls that were not for emergency  
22 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

23 18. Plaintiff is not a customer of Defendant. Plaintiff did not provide her  
24 cellular telephone number to Defendant for any purpose whatsoever. Thus, at no  
25 time did Plaintiff provide Defendant or its agents with prior express consent to  
26 receive telephone calls from an ATDS pursuant to 47 U.S.C. § 227 (b)(1)(A).  
27  
28

1           19. These telephone calls by Defendant, or its agents, violated 47 U.S.C.  
2 § 227(b)(1).

### 3                                   **CLASS ACTION ALLEGATIONS**

4           20. Plaintiff brings this action on behalf of herself and on behalf of and  
5 all others similarly situated (“the Class”).

6           21. Plaintiff represents, and is a member of, the Class, consisting of: All  
7 persons within the United States who received any telephone call/s from  
8 Defendant or its agent/s and/or employee/s to said person’s cellular telephone  
9 made through the use of any automatic telephone dialing system or with an  
10 artificial or prerecorded voice within the four years prior to the filing of the  
11 Complaint.

12           22. Defendant and its employees or agents are excluded from the Class.  
13 Plaintiff does not know the number of members in the Class, but believes the  
14 Class members number in the thousands, if not more. Thus, this matter should be  
15 certified as a Class action to assist in the expeditious litigation of this matter.  
16

17           23. Plaintiff and members of the Class were harmed by the acts of  
18 Defendant in at least the following ways: Defendant, either directly or through its  
19 agents, illegally contacted Plaintiff and the Class members via their cellular  
20 telephones, thereby causing Plaintiff and the Class members to incur certain  
21 cellular telephone charges or reduce cellular telephone time for which Plaintiff  
22 and the Class members previously paid, and invading the privacy of said Plaintiff  
23 and the Class members. Plaintiff and the Class members were damaged thereby.

24           24. This suit seeks only damages and injunctive relief for recovery of  
25 economic injury on behalf of the Class, and it expressly is not intended to request  
26 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
27 right to expand the Class definition to seek recovery on behalf of additional  
28 persons as warranted as facts are learned in further investigation and discovery.

1           25. The joinder of the Class members is impractical and the disposition  
2 of their claims in the Class action will provide substantial benefits both to the  
3 parties and to the court. The Class can be identified through Defendant's records  
4 or Defendant's agents' records.

5           26. There is a well-defined community of interest in the questions of law  
6 and fact involved affecting the parties to be represented. The questions of law  
7 and fact to the Class predominate over questions which may affect individual  
8 Class members, including the following:

- 9           a) Whether, within the four years prior to the filing of this Complaint,  
10 Defendant or its agents placed any calls to the Class (other than a  
11 call made for emergency purposes or made with the prior express  
12 consent of the called party) to a Class member using any automatic  
13 dialing system and/or an artificial or prerecorded voice to any  
14 telephone number assigned to a cellular phone service;  
15  
16           b) Whether Plaintiff and the Class members were damaged thereby, and  
17 the extent of damages for such violation; and  
18  
19           c) Whether Defendant and its agents should be enjoined from engaging  
20 in such conduct in the future.

21           27. As a person that received numerous calls from Defendant via an  
22 automated telephone dialing system and/or an artificial or prerecorded voice,  
23 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and  
24 adequately represent and protect the interests of the Class in that Plaintiff has no  
25 interests antagonistic to any member of the Class.

26           28. Plaintiff and the members of the Class have all suffered irreparable  
27 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a  
28 class action, the Class will continue to face the potential for irreparable harm. In  
addition, these violations of law will be allowed to proceed without remedy and

1 Defendant will likely continue such illegal conduct. Because of the size of the  
2 individual Class member's claims, few, if any, Class members could afford to  
3 seek legal redress for the wrongs complained of herein.

4 29. Plaintiff has retained counsel experienced in handling class action  
5 claims and claims involving violations of the Telephone Consumer Protection  
6 Act.

7 30. A class action is a superior method for the fair and efficient  
8 adjudication of this controversy. Class-wide damages are essential to induce  
9 Defendant to comply with federal and California law. The interest of Class  
10 members in individually controlling the prosecution of separate claims against  
11 Defendant is small because the maximum statutory damages in an individual  
12 action for violation of privacy are minimal. Management of these claims is likely  
13 to present significantly fewer difficulties than those presented in many class  
14 claims.  
15

16 31. Defendant has acted on grounds generally applicable to the Class,  
17 thereby making appropriate final injunctive relief and corresponding declaratory  
18 relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**  
20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
21 **PROTECTION ACT**  
22 **47 U.S.C. § 227 ET SEQ.**

23 32. Plaintiff incorporates by reference all of the above paragraphs of this  
24 Complaint as though fully stated herein.

25 33. The foregoing acts and omissions of Defendant constitute numerous  
26 and multiple negligent violations of the TCPA, including but not limited to each  
27 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.  
28

1           34. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et  
2 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory  
3 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4           35. Plaintiff and the Class are also entitled to and seek injunctive relief  
5 prohibiting such conduct in the future.

6  
7                           **SECOND CAUSE OF ACTION**  
8                           **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**  
9                           **TELEPHONE CONSUMER PROTECTION ACT**  
10                          **47 U.S.C. § 227 ET SEQ.**

11           36. Plaintiff incorporates by reference all of the above paragraphs of this  
12 Complaint as though fully stated herein.

13           37. The foregoing acts and omissions of Defendant constitute numerous  
14 and multiple knowing and/or willful violations of the TCPA, including but not  
15 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et  
16 seq.

17           38. As a result of Defendant's knowing and/or willful violations of 47  
18 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00  
19 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
20 227(b)(3)(C).

21           39. Plaintiff and the Class are also entitled to and seek injunctive relief  
22 prohibiting such conduct in the future.

23                           **PRAYER FOR RELIEF**

24           Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The  
25 Class members the following relief against Defendant:  
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28 ///



**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE  
TCPA, 47 U.S.C. § 227 ET SEQ.**

40. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

41. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

42. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL  
VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

44. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

45. Any other relief the Court may deem just and proper.

**TRIAL BY JURY**

46. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

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2 Respectfully submitted this April 7, 2014.  
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6 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

7 By: /s/ Todd M. Friedman  
8 Todd M. Friedman  
9 Attorney for Plaintiff  
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